Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WAIL M. REFAI

Appeal No. 2004-0565
Application No. 09/048,686

ON BRIEF

Before JERRY SMITH, SAADAT and NAPPI, **Administrative Patent Judges**.

NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 19 and 20.

Invention

The invention relates to a satellite broadband communication system. The system makes use of two signals, an index signal and an information signal. The index signal is transmitted over a narrow band beam and the information is transmitted over a broadband beam. The receivers continuously receive and decode the narrow band signal to obtain address information in the index signal. When the address information matches the receiver's address, the target receiver extracts the data packet destined for the receiver, enables the onboard

buffer to record and store the relevant portion of the information signal. See page 4 of the appellant's specification.

Claim 19 is representative of the invention:

19. A receiver for a broadband communication system comprising:

a first signal processing means for demodulating and decoding a received narrow band index signal to extract addressing information contained in said index signal;

a second signal processing means for demodulating and decoding a received broadband primary data signal; and

control means for selectively activating said second signal processing means based on addressing information in said index signal.

Reference

The reference relied upon by the examiner is:

McCalley et al. (McCalley)	4,829,372	May 9, 1989

Rejections at Issue

Claim 19 stands rejected under 35 U.S.C. § 102 as being anticipated by McCalley. Claim 20 stands rejected under 35 U.S.C. § 103 as being obvious over McCalley. Throughout the opinion, we make reference to the brief[1] and the answer for the respective details thereof.

[1] Appellant filed an appeal brief on August 20, 2002.

Opinion

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellant and examiner, for the reasons stated *infra,* we affirm the examiner's rejection of claim 19 under 35 U.S.C. § 102 and claim 20 under 35 U.S.C. §103.

Appellant argues, on pages 8 and 9 of the brief, tuning of a frequency-agile receiver such as one used by McCalley "cannot reasonably be equated with selective activation of a fixed-frequency receiver. First, such an interpretation is contrary to the plain meaning of the claim language. 'Tune' refers to frequency selection; 'activate' refers to placing in an active or operative state."

We are not convinced by appellant's argument. Claims will be given their broadest reasonable interpretation consistent with the specification, limitations appearing in the specification will not be read into the claims. ***In re Etter,*** 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). In analyzing the scope of the claim, office personnel must rely on the appellant's disclosure to properly

determine the meaning of the terms used in the claims. ***Markman v. Westview Instruments, Inc.***, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word in a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" (emphasis in original) ***In re Cruciferous Sprout Litigation v. Sunrise Farms,*** 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing ***Intervet America, Inc v. Kee-Vet Laboratories, Inc.*** 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)). "[T]he terms used in the claims bear a "heavy presumption" that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Texas Digital Systems, Inc. v. Telegenix, Inc.,*** 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002). "Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." ***Texas Digital Systems, Inc. v. Telegenix, Inc.,*** 308 F.3d at 1204, 64 USPQ2d at 1819 (Fed. Cir. 2002). ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty.");

Id. (citing ***Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (C.C.P.A. 1958) ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." ***Id.*** "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." ***Id.***

On page 9 of the brief, the appellant argues that the disclosure on page 4 of the appellant's specification, makes clear "that 'selective activation' of the broadband primary data receiver path refers to its operative dormancy prior to a relevant address being detected." Further, on page 10 of the brief, appellant provides the following dictionary definition of the term "activate": "to set up conditions so that the object will function as designed or required." We concur with the interpretation of the term "activation" as argued by appellant. Thus, we find that the scope of claim 19 includes a control means which makes the second signal processing means non-dormant, sets up conditions so that the second signal processing means will function as designed or required, and that the second signal processing means demodulates a received broadband signal.

We are unconvinced by Appellant's arguments on pages 8 through 10 of the brief, that "tuning" cannot be equated with "activating." While we agree that the words have entirely different meanings, in reviewing McCalley, we find that the result of tuning the broadband receiver has the effect of setting up the conditions for demodulating a broadband signal.

We find that McCalley teaches a broadband system for use with a cable television system, which makes use of a presentation player (item 54, shown in figure 3 and described in column 7, lines 20-40). The presentation player contains a narrowband fixed channel receiver (item 68) and associated demodulator (item 70), a frequency-agile broadband receiver (item 74) and associated demodulator (item 78). The broadband receiver is tuned by the narrowband receiver via a receiver controller (item 72) (see also column 8 lines 15-34). The broadband receiver is tuned to a frequency band within the cable television spectrum where the digital information stream requested by the subscriber is located (see column 8, line 57-65). McCalley teaches that the device operates as follows:

> The frequency of the designated, high speed input channel is transmitted by receiver controller **72** to a frequency-agile broadband receiver **74**. Receiver **74** tunes to the channel designated by receiver controller **72**. The designated channel signal is sent by receiver **74** to a demodulator **76**. Demodulator **76** converts the analog signal into a digital bit stream, performs forward correction and then sends the digital packets thereby received to receiver controller **72**. At receiver controller **72** the digital packets intended for the presentation player **54** are selected and transmitted to subscriber controller **64**. (column 9, lines 18-29).

We find no disclosure in McCalley that suggests that the demodulator (item 76) operates to demodulate the analog signal prior to the receiver being tuned to the selected channel. Further, to do so would be counter-intuitive as there is no signal to demodulate prior to the receiver being tuned. Thus, we find that McClalley's step of tuning the receiver sets up conditions for the demodulator to demodulate the broadband signal. As stated, *supra,* the scope of claim 19 includes a control means which makes the second signal processing means non-dormant, sets up conditions so that the second signal processing means will function as designed or required, and that the second signal processing means demodulates a received broadband signal. Accordingly, we find McClalley's step of "tuning" to anticipate the claimed step of "selectively activating."

We are not persuaded by appellant's argument on page 7 of the brief that "In McCalley, the selection of data packets for a particular subscriber, based on data packet address information, is performed after the entire data stream on the designated channel is demodulated and decoded" and that " the broadband receiver of McCalley is not 'selectively activated" as clearly recited in claim 19." We concur that McCalley's system includes the data stream demodulated may include data for multiple users. However, we find no limitation within claim 19 that limits the data to one user, i.e., there is no limitation in claim 19 that limits

the demodulated broadband data at the selected address from containing packets of data for multiple users at that address.

Similarly, we are not persuaded by appellant's argument, on page 8 of the brief that:

> An inventive feature of the present invention is that the high-speed, broadband data stream is only selectively demodulated and decoded when (i.e., after) a receiver's address is detected. By having the address and start time information of the primary data packets removed to a narrow band index signal, the receiver of the present invention avoids the need to continuously demodulate, decode and inspect each and every data packet in the broadband signal, as McCalley does. Rather, the broadband receiver path of the present invention may "sleep" until a packet addressed to the receiver is detected in the narrow band index signal, and only at that point be "selectively activated... based on addressing information in said index signal...."

As stated *supra*, we do not find that McCalley teaches that the broadband signal is continuously demodulated, rather, we find that McCalley demodulates the broadband signal after the receiver is tuned to the frequency designated in the signal received by the narrow band receiver. Appellant's argument concerning the broadband path being in a sleep state until a packet addressed to the receiver is a feature that differentiates the disclosed invention and McCalley. However, we do not find that the invention as claimed in claim 19 contains such limitations. As discussed *supra,* McCalley teaches the claimed step of selectively activating the second signal processing. Accordingly, we will sustain the examiner's rejection of claim 19 under 35 U.S.C. § 102.

On page 11 of the brief, appellant argues over the rejection of claim 20 based upon 35 U.S.C. § 103. Appellant argues:

> [a]s discussed above, McCalley does not disclose or suggest a receiver wherein a broadband receiver path is selectively activated in response to addresses detected in a continuously operative narrow band receiver path. The Examiner's official notice of the use of input buffers in the communication arts does not cure this defect.

As stated *supra,* we find that McCalley does teach a receiver where a broadband receiver is selectively activated in response to addresses detected in a continuously operative narrow band receiver path. Accordingly, we will also sustain the examiner's rejection of claim 20 under 35 U.S.C. § 103.

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made, but chose not to make in the brief, or by filing a reply brief have not been considered and are deemed waived by appellant [see 37 CFR § 1.192(a)] Support for this rule has been demonstrated by our reviewing court in ***In re Berger,*** 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed. Cir. 2002) wherein the Federal Circuit Court stated that because the appellant did not contest the merits of the rejections in the brief to the Federal Circuit Court, the issue is waived. ***See also, In re Watts,*** 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

In view of the forgoing, we have sustained the examiner's rejection of claim 19 under 35 U.S.C. § 102 and claim 20 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136 (a).

AFFIRMED

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Administrative Patent Judge)
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MAHSHID D. SAADAT) BOARD OF PATENT
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